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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER CLARK,

Plaintiff,

- against -

THE NEW YORK CITY POLICE DEPARTMENT,  
9th Precinct, et al.,

Defendant.  
-----X

08 Civ. 8544 (GBD) (DFE)

This is not an ECF case

MEMORANDUM AND ORDER

DOUGLAS F. EATON, United States Magistrate Judge.

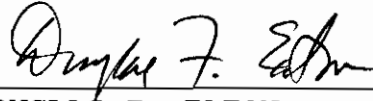
I am responding to Mr. Clark's December 8, 2008 application for court appointed counsel. For the reasons discussed below, I deny his request.

The Court of Appeals for the Second Circuit has held:

When deciding whether to assign counsel to an indigent civil litigant under 28 U.S.C. § 1915(e)(1), we look first to the "likelihood of merit" of the underlying dispute. *Hendricks v. Coughlin*, 114 F.3d 390, 392 (2d Cir. 1997); see also *Cooper v. A. Sargenti Co.*, 877 F.2d 170, 174 (2d Cir. 1989) (*per curiam*). Thus, even though a claim may not be characterized as frivolous, counsel should not be appointed in a case where the merits of the indigent's claim are thin and his chances of prevailing are therefore poor. See *Cooper*, 877 F.2d at 172. Only after an initial finding that a claim is likely one of substance, will we consider secondary factors such as the factual and legal complexity of the case, the ability of the litigant to navigate the legal minefield unassisted, and any other reason why in the particular case appointment of counsel would more probably lead to a just resolution of the dispute. *Hodge v. Police Officers*, 802 F.2d 58, 61-62 (2d Cir. 1986).

*Carmona v. U.S. Bureau of Prisons*, 243 F.3d 629, 632 (2d Cir. 2001). The Second Circuit has repeated this rule, and every judge in the Second Circuit must follow it. See, e.g., *Ferelli v. River Manor Health Care Center*, 323 F.3d 196 (2d Cir. 2003).

On the present record, I am unable to make a finding that the claims in the Complaint are "likely one[s] of substance." Moreover, this case is not complex. Accordingly, I deny his request for appointed counsel without prejudice to a second application after further proceedings have been held, and in no event should plaintiff make such an application before he receives the defendants' Answer or motion, which is due on May 15, 2009.



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DOUGLAS F. EATON  
United States Magistrate Judge  
500 Pearl Street, Room 1360  
New York, New York 10007  
Telephone: (212) 805-6175  
Fax: (212) 805-6181

Dated: New York, New York  
April 29, 2009

Copies of this Memorandum and Order are being sent by mail to:

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Hon. George B. Daniels